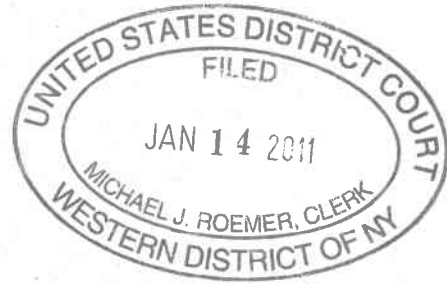


IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA,

**SUPPLEMENTAL
DECISION AND ORDER**

v.

ALEXAI ROGOZIN,

09-CR-379(S)(M)

Defendant.

This Decision and Order supplements my December 23, 2010 Decision and Order [61] which denied the government's motion [60] seeking reargument of my Report and Recommendation dated November 16, 2010 [53]. In response to my request for an explanation as to why it submitted the search warrant application for defendant's iPhone to Magistrate Judge Scott rather than to me, and why it failed to mention the existence of the search warrant to me (either in its post-hearing brief or during oral argument), the government has submitted the affidavit of AUSA Aaron Mango [63].

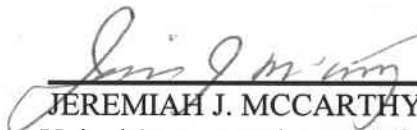
Mr. Mango explains that the government *did* initially submit the search warrant application to my courtroom deputy, who directed it to contact Magistrate Judge Scott. [63], ¶4(c). While I was unaware of that fact, that is not the government's fault. However, his explanation that AUSA O'Donnell "did not mention the search warrant to the Court in her post-hearing brief or during oral argument because she did not know what the results of the search warrant were, or whether any images were located on the iPhone" ([63], p.4) is, in my view, not

an acceptable reason for having failed to mention the existence of the warrant before my Report and Recommendation [53] issued.

For these reasons, together with those stated previously [61], the government is not entitled to reargument.

SO ORDERED.

DATED: January 14, 2011


JEREMIAH J. MCCARTHY
United States Magistrate Judge